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No. 50

In the Supreme Court of the United States

OCTOBER TERM, 1945

GLASS CITY BANK OF JEANNETTE, PENNSYLVANIA, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES

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OPINIONS BELOW

The opinion of the District Court (R. 7–12) is reported at 54 F. Supp. 11. The opinion of the Circuit Court of Appeals (R. 15–18) is reported at 146 F. 2d 831.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on December 29, 1944. (R. 19.) The petition for a writ of certiorari was filed on March 26, 1945, and was granted on May 7, 1945. (R. 21.) The jurisdiction of this Court is conferred by Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Whether under Sections 3670 and 3671 of the Internal Revenue Code liens of the United States for income taxes attached to a receiver's fee which was earned and allowed after the tax liens came into force.

2. Whether the liens are effective as against subsequent claimants without steps to enforce them by attachment or distraint.

STATUTES AND ADMINISTRATIVE RULINGS INVOLVED

The applicable statutes and administrative rulings are set out in the Appendix, *infra*, pp. 41–55.

STATEMENT

The facts as found by the District Court may be stated as follows:

One Frank A. Maddas was appointed equity receiver of the Victor Brewing Company in proceedings in the Court of Common Pleas of Westmoreland County, Pennsylvania. He served in that capacity from December 28, 1938, to October 22, 1940. (R. 7.)

On October 4, 1940, a petition was filed in the United States District Court for the Western District of Pennsylvania for a reorganization of the Victor Brewing Company under Chapter X of the Bankruptcy Act, as amended. On January 31, 1941, the debtor company was adjudicated a bankrupt. (R. 8.)

On June 13, 1941, Maddas filed an application with the bankruptcy court for an allowance of receiver's fees and was allowed by the referee the total amount of $15,000 for his services as receiver. Maddas had previously been paid the amount of $11,771.47 through order of the Common Pleas Court, which left a balance due him of $3,228.53, which sum is now held by the trustees in bankruptcy. (R. 8.)

On February 15, 1941, petitioner (hereinafter referred to as the Bank) obtained a judgment against Maddas for $19,041.75 in the Court of Common Pleas of Allegheny County, Pennsylvania. On February 21, 1941, without first securing leave of the bankruptcy court, the Bank issued an attachment execution out of the state court summoning the trustees in bankruptcy as garnishees. The trustees opposed the garnishment and filed an application in the bankruptcy court to enjoin the proceedings. (R. 8.)

Prior to the garnishment, on October 23, 1940, the bankruptcy court had entered an order providing in part as follows (R. 8):

> All creditors and stockholders of the debtor and all persons whomsoever are hereby enjoined and restrained in any manner whatsoever from interfering with money, property or assets of which the trustees shall be entitled to take possession, and from interfering in any manner with the discharge by the trustees of their duties and the management of the business and property of the

debtor, and from interfering in any manner during the pendency of this proceeding with the exclusive jurisdiction of this Court over the debtor and such property and assets.

On April 2, 1941, the bankruptcy court enjoined the Bank from proceeding with its attachment proceedings. Later the Bank again sought leave to proceed with its attachment proceedings, but on April 29, 1942, this application was denied.[1] (R. 8.)

The United States has outstanding against Maddas a claim for unpaid Federal income taxes for the years 1920, 1921, and 1922 in the aggregate amount of $1,258,671 which were assessed on August 10, 1935.[2] The Collector received the assessment lists on August 12, 1935, and gave notices and demands for payment of the taxes on August 13 and August 24, 1935. Notices of tax liens were filed with the Clerk of the United States District Court on July 27, 1939, and with the Prothonotary of Westmoreland County, Pennsylvania, on July 29, 1939. (R. 9, 16.)

The United States also has outstanding against Maddas a claim for unpaid income tax for 1936 in the amount of $9,129.72, which was assessed on January 17, 1941. The Collector received the assessment list on January 20, 1941, and gave

[1] See opinions at 48 F. Supp. 905 and 907.

[2] The validity and timeliness of this assessment of taxes (which was based on fraud) were established in *Maddas* v. *Commissioner*, 40 B. T. A. 572, affirmed 114 F. 2d 548 (C. C. A. 3d).

notices and demands for payment of the tax on January 21, 1941, and February 3, 1941. Notices of tax liens were filed with the Clerk of the District Court and the Prothonotary named in the preceding paragraph on April 4 and 7, 1941, respectively. (R. 9.)

The case came before the District Court on certificate to review an order of the referee in bankruptcy disposing of the amount of $3,228.53 awarded to Maddas as his receiver's fee. The order directed the payment first of an $800 note given by Maddas to the First National Bank of Greensburg, Pennsylvania, and ordered the balance of the $3,228.53 to be paid to the collector of Internal Revenue. The United States filed a petition to review this order, claiming that the entire $3,228.53 should be paid to the Collector to apply on Federal tax liens against Maddas. (R. 7.) The petitioner Bank, a claimant to the fund by reason of the attachment execution issued February 19, 1941, on its judgment, as stated above, also sought a review of the order, claiming the entire fund should be awarded to it. (R. 7.)

The District Court's order granted priority to the United States over both the petitioner Bank and the First National Bank of Greensburg as to the entire fund. (R. 12–13.) Upon the petitioner Bank's appeal from this order,[1] the Circuit Court

[1] The First National Bank of Greensburg took no appeal from the District Court's order of distribution; hence its rights as a creditor of Maddas are not involved in this case.

of Appeals for the Third Circuit affirmed. (R. 15–18.)

SUMMARY OF ARGUMENT

I

The lien of the United States for 1920, 1921 and 1922 taxes antedates any rights to the receiver's fee of the delinquent taxpayer, Maddas, which the Bank may have acquired by attachment proceedings pursuant to its judgment against Maddas. Consequently if the lien attached to Maddas's right to the fee, when earned, as after-acquired property, the United States is entitled to the fund here involved.

It has quite uniformly been held that the tax lien captures after-acquired property. This conclusion is compelled by the language of the statute creating a sweeping lien upon "all property and rights to property whether real or personal" belonging to the delinquent taxpayer. No property acquired and owned while the lien is effective may be excepted under this language. An amendment in 1936 to the present Section 3678 of the Internal Revenue Code, providing for an action to enforce the lien, and an amendment in 1928 to Section 3670 creating the lien, evidence Congressional recognition that the lien extends to after-acquired property. Administrative interpretations to the same effect have received the implied approval of Congress through the retention of the statute without change in this respect,

despite other amendments. The analogy of judgment liens, which embrace after-acquired property of such a nature that it would have been subject to lien if owned at the time of judgment, points to the same conclusion.

The dicta in two decisions, stating that after-acquired rights are free of the Government's tax lien, are not persuasive. Neither case turned upon the question or gave it full consideration. Moreover the dictum of the Circuit Court of Appeals for the Second Circuit in one of these cases is inconsistent with later decisions of the same court.

Nothing in the pertinent statutes or their legislative history suggests that claims for salary or wages previously earned are not property or a right to property subject to the lien for taxes. The policy of state statutes limiting or exempting compensation for personal services from attachment, like the analogous policy in respect to homesteads, has not been embodied in the Internal Revenue Code. State statutes clearly do not limit the United States in collecting its taxes, unless they have been made applicable by act of Congress. The lien does not have an adverse effect on business dealings with a taxpayer, since it attaches to the taxpayer's claims for money and not to the correlative obligations of third persons to him. Obligations to a taxpayer may therefore be incurred and paid without fear of liability to the Government, unless payments are made after

notice and demand by the collector upon the debtor. Possible hardship to third persons is, moreover, not a ground for restricting the Government's statutory rights by judicial decision.

II

The Government's tax lien is fully operative from the time the statutory steps to establish it are taken. As against judgment creditors the final step needed is the filing of notice, which in this case preceded the Bank's judgment. The Government's lien required no attachment or distraint to render it effective. It was asserted in this case by filing a claim with the trustees in bankruptcy.

III

The Government made the alternative contention in the court below that its lien for 1936 taxes, as distinguished from its liens for the years 1920, 1921, and 1922, should prevail over the Bank's claim for independent reasons, even if the liens for the earlier years were held not to embrace Maddas's after-acquired right to the receiver's fee. The Circuit Court of Appeals, however, did not pass upon the questions involved in this contention, resting its judgment instead upon the application of the liens to after-acquired property. The questions involved are complex and require consideration of state statutes and decisions, among other authorities. We refrain from pre-

senting these points in this Court and respectfully suggest that, if the judgment of the Circuit Court of Appeals cannot be affirmed upon the grounds which have been argued, the case be remanded for further consideration by that court.

ARGUMENT

I

THE TAX LIEN OF THE UNITED STATES EMBRACES PROPERTY AND RIGHTS TO PROPERTY, INCLUDING CLAIMS FOR COMPENSATION FOR PERSONAL SERVICES, ACQUIRED AFTER THE LIEN CAME INTO EFFECT

The Bank claims the fund here involved, consisting of the receiver's fee earned by Maddas prior to October 22, 1940, by virtue of an attachment execution issued February 21, 1941, on a judgement obtained by it against Maddas on February 15, 1941. The United States bases its claim primarily upon its liens for unpaid taxes for the years 1920, 1921, and 1922, notices of which were filed in 1939.[4]

Section 3670 of the Internal Revenue Code (*infra*, p. 42) provides in substance that if any person fails to pay a tax after demand, the amount thereof shall be a lien in favor of the United States upon all property and rights to

[4] The United States claims alternatively because of its lien for 1936 taxes, which became effective after Maddas's services as receiver had been fully performed. Since the Circuit Court of Appeals did not pass upon the questions involved in this claim, we do not discuss them in this brief for reasons which are more fully stated below. See *infra*, pp. 35–40.

property, whether real or personal, belonging to the taxpayer. Section 3671 (*infra*, p. 42) provides that the lien arises at the time the assessment list is received by the collector and continues until the liability for the tax is satisfied or becomes unenforceable by lapse of time. Section 3672 (*infra*, pp. 42–44) provides that the lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice has been filed by the collector under a law of the State in which the property is situated authorizing the filing, or, if there is no such law, in the office of the clerk of the United States district court for the district in which the property is situated.

By virtue of these sections, the United States on August 12, 1935, the date on which the collector received assessment lists for 1920, 1921, and 1922 taxes in the aggregate amount of $1,258,671, acquired liens upon all property and rights to property of Maddas. These liens became valid as against other claimants to the property on July 29, 1939, the date on which notices were filed with the Prothonotary of Westmoreland County under Pennsylvania law. These liens continue in effect until the tax liability is satisfied or becomes unenforceable by lapse of time.[5]

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[5] As pointed out above (fn. 2, p. 4), it was established in *Maddas* v. *Commissioner*, 40 B. T. A. 572, affirmed, 114 F. 2d 548 (C. C. A. 3d), that the taxes were due from Maddas and that the assessment was not barred by the statute of limitations since Maddas's returns for the years 1920, 1921, and

(Continued on page 11)

Since the Bank did not obtain a judgment and issue a writ of attachment execution thereon until February, 1941, it is clear that whatever rights the Bank obtained thereby were subordinate to

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(Footnote 5—Continued)

1922 were made falsely and fraudulently with intent to evade taxes.

There were introduced in evidence in the hearing before the bankruptcy referee on October 13, 1942, as Exhibits 1, 2, and 3, waivers obtained from Maddas pursuant to Section 276 of the Internal Revenue Code, *infra*, p. 41, extending the time for collection of the unpaid 1920, 1921, and 1922 taxes by distraint or proceeding in court begun before December 31, 1942. The waivers are not contained in the record below or in the record certified to this Court, since no question was raised concerning the running of the period of limitation until the petition was filed in this Court (Pet. 32–35).

The filing of a claim with a trustee in bankruptcy, receiver, or probate court constitutes the commencement of a proceeding in court for collection. *In re McClure Co.*, 38 F. 2d 538 (N. D. Ga.); *Hammond* v. *Carthage Sulphite Pulp and Paper Co.*, 34 F. 2d 155 (N. D. N. Y.); *United States* v. *Paisley*, 26 F. Supp. 237 (N. D. Ill.); *United States* v. *First National Bank*, 54 F. Supp. 351 (N. D. Ohio). On December 6, 1941, the United States filed with the trustees in bankruptcy notices of its liens and claims for payment of all moneys awarded Maddas on account of its lien for taxes. See *In re Victor Brewing Co.*, 48 Supp. 907 (W. D. Pa.). These claims were timely. The contention that they were not cannot, moreover, be advanced for the first time in this Court, *Hormel* v. *Helvering*, 312 U. S. 552, 556; *Blair* v. *Oesterlein Co.*, 275 U. S. 220, 225; *Ashton* v. *Glaze*, 95 F. 2d 427, 429 (C. C. A. 9), especially where, as here, the record on appeal has been prepared without reference to the question sought to be raised. *H. E. Wolfe Const. Co.* v. *Fersner*, 58 F. 2d 27 (C. C. A. 4); cf. *Hughes* v. *Windel*, 317 U. S. 134, and *McCandless* v. *Furland*, 293 U. S. 67, 73–74.

the liens of the United States just referred to.[6] If Maddas's right to the fee awarded him by the referee in bankruptcy in 1941 for his services as receiver (R. 18) is property or a right to property covered by the Government's lien, the lower court was correct in approving the order directing payment of the fee to the United States.

The Bank contends that the lien under Section 3670 attaches only to property and rights to property which Maddas owned when the lien came into existence and that, further, since Maddas had performed no services as receiver when the lien arose in 1935 and since "future earning capacity" is not property under the law of Pennsylvania, there is no property right embracing the fee, to which the lien attaches.[7] (Pet. 3, 8, 14.)

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[6] There is, of course, no question as to the general principle that a perfected lien prior in point of time prevails over subsequently arising rights, or liens. *Michigan* v. *United States*, 317 U. S. 338; *Howard* v. *Railway Co.*, 101 U. S. 837, 845; *Rankin* v. *Scott*, 12 Wheat. 177, 179; *United States* v. *City of Greenville*, 118 F. 2d 963, 966 (C. C. A. 4); compare *United States* v. *Alabama*, 313 U. S. 274; *Burton* v. *Smith*, 13 Pet. 464.

[7] In support of its argument that future earning capacity is not a property right the Bank cites Pennsylvania cases to show that future earnings are not assignable under the law of that State. (Pet. 24–26.) The point has no relevance here, since this case is concerned, not with future earning capacity, but with the receiver's fee after it had been earned. In any case, however, there is no indication in Section 3670 of the Internal Revenue Code that the term "rights to property" means only property rights which are assignable under state law. On the contrary, the statute is one that is to be given a

(Continued on page 13)

The Government's position, which was sustained by the lower court (R. 15–18), is that "all property and rights to property" of the taxpayer, to which the lien attaches under the statute, includes property which the taxpayer may acquire while the lien is in effect, as well as property which he owned at the time the lien became operative. We do not contend that in 1935 there was a presently existing right of property in Maddas's future earnings, to which the lien applied. Upon completion of Maddas's services as receiver in 1940, however, or at least when the fee was finally allowed in June 1941, he acquired the right to receive a reasonable fee, and this was a right of property acquired after the lien arose, which came under the lien. This lien is superior to any claim subsequently arising.

A. THE LIEN APPLIES TO AFTER-ACQUIRED PROPERTY.

It has been uniformly held, except for dicta in two cases which will be discussed below, that the Government's tax lien attaches to after-acquired property. *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9); *Nelson* v. *United States*, 139 F. 2d

uniform application to all property rights wherever located, irrespective of whether or not they are assignable under local law. Cf. *Helvering* v. *Stuart*, 317 U. S. 154, 161–162; *Lyeth* v. *Hoey*, 305 U. S. 188, 194; *Burnet* v. *Harmel*, 287 U. S. 103, 110.

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162 (C. C. A. 9), certiorari denied, 322 U. S. 764; *Investment & Securities Co.* v. *United States*, 140 F. 2d 894 (C. C. A. 9); *United States* v. *Worley* (S. D. Ind.), decided March 8, 1940 (27 A. F. T. R. 1143); *Minnesota Mut. Life Ins. Co.* v. *United States*, 47 F. 2d 942, 944 (N. D. Tex.); *Graves* v. *Commissioner*, 12 B. T. A. 124, 132–133; T. D. 4275, VIII–2 Cum. Bull. 167 (1929) (*infra*, pp. 54–55); G. C. M. 4715, VII–2 Cum. Bull. 94 (1928) (*infra*, pp. 52–54). See also Rogge, *The Tax Lien of the United States*, 13 A. B. A. J. 576, 579 (1927), in which it was said prior to any explicit Federal decision that, since the lien is a general, sweeping lien, "it will apply to all the property that the tax debtor subsequently acquires," and Note, 56 Harv. L. Rev. 143 (1942).[8] Furthermore, the clear implication of the decisions in *United States* v. *Morris & Essex R. Co.*, 135 F. 2d 711 (C. C. A. 2), certiorari denied, 320 U. S. 754; *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2); *Matter of Rosenberg*, 269 N. Y. 247, certiorari denied, 298 U. S. 669; and *United States* v. *Canfield*, 29 F. Supp. 734 (S. D. Cal.), appeal dismissed *sub. nom. Security First Nat. Bank of Los Angeles* v. *United States*, 113 F. 2d 491 (C. C. A. 9), although it is not

[8] Cf. *Robinson* v. *Youngblood*, 54 Ind. App. 669, in which it was held, under a state statute which made all property of a taxpayer liable for the payment of all taxes, that (p. 672) "it is clear that all property of the person against whom taxes are assessed is covered by the lien of such taxes regardless of whether the title is acquired before or after the lien attaches."

spelled out in so many words, is that the tax lien embraces subsequently acquired property. The conclusion of these cases results from the broad language of the statute and from related considerations.

1. *The Word "All" in the Statute Embraces After-Acquired Property.*

Section 3670 contains the inclusive word "all" to designate the property to which the lien attaches. No broader term could have been employed. In the absence of a clearly indicated intention on the part of Congress to restrict the meaning of the phrase "all property and rights to property", there is no reason to circumscribe it by interpretation. This is particularly true since a statute providing for the collection of revenue is involved. Cf. *Michigan* v. *United States*, 317 U. S. 338; *United States* v. *Snyder*, 149 U. S. 210.

The provision for a Federal tax lien was originally enacted in Section 9 of the Act of July 13, 1866, c. 184, 14 Stat. 98, 107. That section reads in part:

> And if any person, bank, association, company, or corporation, liable to pay any tax, shall neglect or refuse to pay the same after demand, the amount shall be a lien in favor of the United States from the time it was due until paid, with the interest, penalties, and costs that may accrue in addition thereto, upon all property and

> rights to property belonging to such person, * * *"

Despite the many amendments to this statute, to be hereinafter discussed, the words "all property and rights to property" have not been changed or limited by Congress in any way. That their broad meaning embraces after-acquired property of the taxpayer was, on the contrary, recognized by an amendment in the Revenue Act of 1936 to Section 3207 of the Revised Statutes (now Sec. 3678 of the Internal Revenue Code, *infra*, pp. 46–47) which provides a remedy by civil action to enforce the lien, and in the original enactment of Section 3207. The amendment extends the action to personal property, whereas previously it had been limited to real property.[10]

The provision of Section 3207 was originally contained in Section 106 of the Act of July 20, 1868.[11] As enacted and in the revision incorporated in the Revised Statutes, that section provided that "The Commissioner of Internal Revenue may * * * direct that a bill in chancery be filed * * * to enforce the lien of the United States for tax upon any real estate, or to subject any real estate owned by the delinquent, or in which he has any right, title, or interest, to the

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[9] The provision was in the bill submitted to the House by the Ways and Means Committee and was not discussed on the floor of either the House or the Senate. See 71 Cong. Globe, pp. 2577–2578; 72 Cong. Globe, p. 3286. There were apparently no written committee reports on the bill.

[10] June 22, 1936, c. 690, Sec. 802 (a), 49 Stat. 1743.

[11] C. 186, 15 Stat. 125, 167.

payment of such tax." As amended, this provision was made to read that the bill in chancery may be filed "to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property, owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax."

The 1936 proposal to enlarge the Government's remedy upon the tax lien was originally contained in a bill to amend certain administrative provisions of the internal revenue laws which was later merged with the Revenue Bill of 1936.[12] It was described in the House committee report upon the administrative bill as intended to supply a jurisdiction previously lacking in the Federal courts "to enforce a lien for tax against personal property," in order to provide an alternative remedy in situations where distraint (see Section 3690 of the Internal Revenue Code, *infra*, p. 48) "would be drastic and would cause considerable hardship to parties interested in the taxpayer proceeded against."[13] Envisaging a situation in which the Government might seek to enforce the tax liability of a holding company against the securities of operating companies which it held, the committee pointed out that the seizure and sale of such se-

[12] See the statement of Congressman Doughton explaining the conference report upon the revenue bill, 80 Cong. Rec. 10270.

[13] H. Rep. No. 2818, 74th Cong., 2d sess., p. 7.

curities in distraint proceedings might have serious effects upon the operating companies. These effects might be avoided in judicial proceedings, particularly if the court were empowered to appoint a receiver. A provision was accordingly added to the statute, authorizing the appointment of "a receiver to enforce the lien." (See Section 3678 (d) of the Internal Revenue Code, *infra*, p. 47.) The committee report made no suggestion that the Government's remedy extends beyond its lien or that it is limited to securities owned by a holding company at the effective date of the lien. On the contrary, the language of the section, particularly as amended, has reference to enforcement of the lien, and the property which is the subject of the action is described as "any property and rights to property owned by the delinquent"—words of the present tense in relation to the time the action is brought, not to the time the lien became effective. The reference in the report to distraint as an alternative remedy also indicates that all of the property owned by the taxpayer at the time the remedy is invoked was envisaged; for as the petitioner concedes (Pet. 9), distraint may be had against all property without reference to when it was acquired. The conclusion seems inescapable that Congress has all along contemplated the application of the tax lien to all property owned by a taxpayer at the time the lien is sought to be enforced.

The evolution of the lien provision of Section 3670 itself points to the same conclusion. The original provision (Section 9 of the Act of July 13, 1866, *supra*) was incorporated into the Revised Statutes as Section 3186. In 1879 the words "from the time it was due," fixing the time the lien arises, were changed to "when the assessment list was received by the collector." See Section 3, Act of March 1, 1879, c. 125, 20 Stat. 327, 331.[14] The Act of March 4, 1913, c. 166, 37 Stat. 1016, amending Section 3186 of the Revised Statutes, for the first time made provision for the protection of mortgagees, purchasers, and judgment creditors, by providing that tax liens shall not be valid against them until notice of such liens shall be filed in the office of the clerk of the district court[15] or an appropriate state office. A minor amendment, not relevant here, was made as to the recording of such notices by the Act of February 26, 1925, c. 344, 43 Stat. 994. By Section 613 of the Revenue Act of 1928, c. 852, 45 Stat. 791, 875,

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[14] This change was made in the Senate, sitting as a committee of the whole, but without discussion. 8 Cong. Rec., Part 2, p. 1441.

[15] The committee reports on this bill state that the lien is so comprehensive that it covers all property and rights of the delinquent situated anywhere in the United States. They also show that the amendment was necessary, in view of this Court's decision in *United States* v. *Snyder*, 149 U. S. 210, to protect innocent purchasers, mortgagees, and judgment creditors from the "secret" lien. S. Rep. No. 1315, 62d Cong., 3d Sess., pp. 1-2; H. Rep. No. 1018, 62d Cong., 2d Sess., pp. 1-2.

it was provided that the lien should "continue until the liability for such amount [of tax] is satisfied or becomes unenforceable by reason of lapse of time." [16]

After the 1928 amendment, as before, the statute made no explicit reference to after-acquired property; [17] but if it should be held that the tax lien attaches only to property or property rights owned by the taxpayer at the time the lien was perfected, the new word "continue" in the Rev-

[16] The reports are not helpful with respect to the reason for this amendment. H. Rep. No. 2, 70th Cong., 1st Sess., p. 35 (1939-1 Cum. Bull. (Part 2) 384, 407–408); S. Rep. No. 960, 70th Cong., 1st Sess., p. 43 (1939-1 Cum. Bull. (Part 2) 409, 439).

To complete the legislative history: Section 3186 of the Revised Statutes was further amended in a way not material here by Section 509 of the Revenue Act of 1934, c. 277, 48 Stat. 680, 757. Revised Statutes, Section 3186, as amended, became Sections 3670, 3671, and 3672 of the Internal Revenue Code. Section 3672 was amended by Section 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, 882, to protect pledgees against the lien unless notice is filed and to protect innocent purchasers, mortgagees, or pledgees of a "security", unless they have actual notice of the existence of the lien. Section 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798, made only a formal amendment to Section 3672.

[17] Compare Section 1009 of the Internal Revenue Code, which imposes a ten-year lien for gift taxes upon gift property and provides that if the gift property is sold to a bona fide purchaser for a full consideration it shall be divested of the lien, but that "the lien, to the extent of the value of such gift, shall attach to all the property of the donee (including after-acquired property)", except any part sold to a bona fide purchaser for a full consideration. This provision originated in Section 510 of the Revenue Act of 1932, c. 209, 47 Stat. 169.

enue Act of 1928 would be deprived of virtually all meaning. Under the previous unamended section (*supra*, pp. 15–16), the lien would continue in any event as to property owned at the time the lien was perfected, until the tax was paid or the lien was otherwise removed. The additional language strongly suggests that the continuation has reference to property which the taxpayer may subsequently acquire. It would thwart the purpose of Congress in providing that the lien is to "continue" with respect to "all" of a taxpayer's property, to limit it to certain property only, namely, that which was owned when the lien arose. Such an interpretation would mean that in a case in which the taxpayer owned no property when the lien was created, the lien would never become effective. By specifying that the lien should continue, Congress provided for this situation and, as well, made certain that additional property of all taxpayers against whom liens might become effective, should become subject to the lien.[18]

[18] That Congress has no policy to release a taxpayer or any property he may acquire from liability until his taxes have been paid in full is shown by reference to the Bankruptcy Act of 1898, c. 541, 30 Stat. 544, as amended (11 U. S. C. 35). There Congress has long provided (Section 17 (a) (1)) that taxes due the United States are not dischargeable in bankruptcy. Hence, although a bankrupt turns over all his property, he does not receive a discharge as to his taxes and any property he may acquire in the future can be seized. There is no reason to believe that Congress intended a more lenient policy in the case of an ordinary delinquent taxpayer subject to the lien.

It is true, as the Bank states (Pet. 29), that the 1928 amendment placed a limitation upon the life of the lien which had not previously been expressed; but it does not follow that the lien was not intended to have full effect during its continuance. The 1928 amendment emphasizes that the purpose of the lien is to implement the collection of the tax, and it therefore expires when the tax becomes uncollectible. It extends, likewise, to all property answerable for the tax, including after-acquired property, to which the remedy of distraint applies (see *supra*, p. 18).[19]

2. *The Administrative Construction Has Been in Accord.*

The administrative construction of Section 3186 of the Revised Statutes (now Section 3670 of the Internal Revenue Code) has consistently been that the lien includes after-acquired property. G. C. M. 4715, VII–2 Cum. Bull. 94 (1928) (*infra*, pp. 52–54), discusses the provision of Section 613 of the Revenue Act of 1928 that a Collector may issue a certificate of release of a tax lien, if he finds that the tax assessment together with interest has been satisfied or has become unenforceable. The memorandum ruled that a release of the Government's lien should not be given before expiration of the statutory period of limitation if the tax has not

[19] If a taxpayer is the head of a family, his property which is subject to distraint does not include the limited classes of property specified in Section 3691 of the Internal Revenue Code, *infra*, pp. 48–49.

been paid, because the taxpayer may acquire other property to which the lien would attach prior to the expiration of the statutory period.

Similarly, T. D. 4275, VIII–2 Cum. Bull. 167 (1929) (*infra*, pp. 54–55), which also promulgated regulations dealing with the release and discharge of tax liens under Section 613, warned Collectors to secure waivers extending the time for collection of a tax (thereby extending the period of effectiveness of the lien) whenever it is reasonably possible that a taxpayer may acquire property or property rights from which the liability may be satisfied. See also *Graves* v. *Commissioner*, 12 B. T. A. 124, in which it was said (p. 133):

> It [the lien] relates back from the time of notice and demand to the time when the assessment list was received by the collector, and it attaches upon such property as the taxpayer has at the time the lien arises, that is, at the time of notice and demand, *United States* v. *Pacific R. R.*, 1 Fed. 97, and, of course, to all the property that the tax debtor subsequently acquires.

Since these administrative interpretations became known, Congress has amended Section 3186 of the Revised Statutes; has incorporated it into the Internal Revenue Code; and has amended the Code two times in pertinent respects, without excluding after-acquired property from the scope of the lien. See *supra*, pp. 20–21. In these circumstances, the legislature must be deemed to

have impliedly accepted the administrative construction. *Helvering* v. *Reynolds Co.*, 306 U. S. 110; *National Lead Co.* v. *United States*, 252 U. S. 140; *Maryland Casualty Co.* v. *United States*, 251 U. S. 342.

3. *The Analogy of Judgment Liens Supports the Extension of the Tax Lien to After-acquired Property.*

In *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9), the court referred to the analogy of judgment liens (p. 528); but the court below thought that since a judgment lien is concerned only with real estate, the analogy is inapplicable to this case which involves only personalty. (R. 17.) The *Citizens National Trust & Savings Bank* case also involved only personalty, however (135 F. 2d at 529), and we think, as did the Circuit Court of Appeals for the Ninth Circuit, that the analogy is helpful. A tax assessment has the effect of a judgment. *Bull* v. *United States*, 295 U. S. 247, 260. Hence the lien arising therefrom, although of a higher status, possesses the attributes of a judgment lien as well as many of its own which a judgment lien may not have. Judgment liens historically are liens only upon real estate, whereas the tax lien is on all property, both real and personal; but the same considerations which cause a judgment lien to attach to after-acquired property of the type which is subject to such a lien should cause the tax lien to apply to

all after-acquired property of types to which that lien might originally have applied. The mere fact that property is personal should not mean that the operation of liens with respect to it is different.

By the great weight of authority, in the absence of statute, judgment liens do extend to after-acquired real estate. *Coad* v. *Cowhick*, 9 Wyo. 316; *Atlas Portland Cement Co.* v. *Fox*, 265 Fed. 444, 266 Fed. 1021 (App. D. C.); *Colt* v. *DuBois*, 7 Neb. 391; *Duell* v. *Potter*, 51 Neb. 241; *Musa* v. *Segelke & Kolhaus Co.*, 224 Wis. 432; *Harrison and Wife* v. *Roberts*, 6 Fla. 711; *Porter-Mallard Co.* v. *Dugger*, 117 Fla. 137; *Steele* v. *Taylor*, 1 Minn. 274; *Babcock* v. *Jones*, 15 Kan. 296; *Ralston* v. *Field*, 32 Ga. 453; *Trustees R. E. Bank* v. *Watson & Hubbard*, 13 Ark. 74; cf. *Jenkins* v. *Gowen*, 37 Miss. 444; *Jones* v. *Hall*, 177 Va. 658. This is also the rule in England. 19 Halsbury, *Laws of England* (2d ed.), 251; *Coad* v. *Cowhick*, *supra*. Only two states, Pennsylvania and Ohio, seem to have taken the contrary view; and even in these the rule apparently was continued, in the face of attacks upon its correctness, only because it had become too firmly rooted in the local law to be changed. See *Waters's Appeal*, 35 Pa. 523; *Stiles* v. *Murphy*, 4 Ohio 92. We submit that the rule followed by the States generally with respect to judgment liens is correct and should be applied to the tax lien as respects both real

and personal property.[20] See *United States* v. *Taft*, 44 F. Supp. 564 (S. D. Cal.), affirmed *sub nom. Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527 (C. C. A. 9).

4. *Certain Dicta to the Contrary Are Not Persuasive.*

As has been indicated (*supra*, p. 13), two cases contain dicta to the effect that the tax lien does not capture after-acquired property. In *United States* v. *Pacific Railroad*, 1 Fed. 97 (C. C. E. D. Mo.), the question was whether the lien attached to property which had belonged to the taxpayer at the time the taxes became due but which had been conveyed to innocent purchasers prior to demand for the taxes and perfection of the Government's lien. The court construed the statute (as it existed in 1880) to mean that the lien, when it attaches upon demand, relates back to the time when the tax was due, but that it does not attach to property transferred to innocent purchasers

[20] The Pennsylvania rule that after-acquired real property is not covered by a judgment lien should, of course, not be persuasive in deciding the scope of the tax lien, merely because property located in Pennsylvania is involved. A uniform rule as to the scope of the tax lien must be formulated for a nationwide scheme of collection, and this is not determinable by reference to state law on the subject, unless Congress has clearly so decreed. Cf. *Helvering* v. *Stuart*, 317 U. S. 154, 161–162; *Lyeth* v. *Hoey*, 305 U. S. 188, 194.

in the interim,[21] applying only to property owned "at the time when the demand is made" (1 Fed. at 100). Since the case did not involve after-acquired property, the language employed is not significant with respect to such property. In any case, the court was construing the statute as it read prior to the amendment in 1928, which, as we have shown, contains additional evidence of the intent of Congress that the lien shall attach to after-acquired property. See *Citizens Nat. Trust & S. Bank of Los Angeles* v. *United States*, 135 F. 2d 527, 529–530 (C. C. A. 9).

United States v. *Long Island Drug Co.*, 115 F. 2d 983 (C. C. A. 2), involved an action brought to enforce the liability provided in Section 3710 (b) of the Internal Revenue Code (*infra*, p. 51), against the Drug Company for failure to surrender property of an employee demanded by the collector. The Company's liability depended on whether it was "in possession of property, * * * sub-

[21] This holding may have been erroneous since it has been held by this Court that the lien, prior to its amendment in 1913 to protect purchasers, mortgagees, and judgment creditors until notice of the lien has been recorded, does attach to property in the hands of bona fide purchasers and encumbrancers. *United States* v. *Snyder*, 149 U. S. 210; see also *United States* v. *Curry*, 201 Fed. 371 (D. Md.); and cf. *Detroit Bank* v. *United States*, 317 U. S. 329, deciding that the estate tax lien created by Section 827 of the Internal Revenue Code is valid generally without recordation.

ject to distraint",[22] of its employee Steinberg on the dates when demands and copies of distraint warrants and of previous notices of liens with respect to taxes due from Steinberg (see Section 3692 of the Internal Revenue Code, *infra*, pp. 49–50) were served on the Company on April 15, 1936, and March 7, 1939, under Section 3710 (a). At the time of the first demand there was no accrued salary due Steinberg, since he had already overdrawn his salary, and hence no property in the Drug Company's hands subject to distraint. Subsequently, but before service of the second demand, Steinberg agreed with the Drug Company that all of his earnings might thereafter be applied toward repayment of loans made by the Drug Company to his wife, which he had guaranteed. The Circuit Court of Appeals for the Second Circuit held that no salary was due Steinberg when the second demand was made upon the Drug Company, since all of his earnings passed immediately to the Company by virtue of the assignment.

The court held that the contingent possibility that the taxpayer, Steinberg, might receive future earnings was not an existing right of property subject to levy at the time of the first demand

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[22] Section 3690 of the Internal Revenue Code authorizes distraint upon the goods, chattels, and effects, including bank accounts and evidences of debt of the delinquent taxpayer; and if these are not sufficient, the collector is authorized by Section 3700 (*infra*, p. 51) to seize and sell real estate.

and, further, that no lien had been created with respect to these earnings which might prevail over the subsequent assignment to the Drug Company. The basis of the decision was that at no time was the Company in possession of accrued earnings belonging to the taxpayer, upon which either the collector's demand or the Government's lien could operate. Hence the court's statement that "rights which do not exist at the time of the demand upon the taxpayer are not subject to any lien" was made *obiter*, as was recognized by the court below (R. 17–18) and by the Circuit Court of Appeals for the Ninth Circuit in the *Citizens Nat. Trust & S. Bank* case (135 F. 2d at 530).

The dictum of the *Long Island Drug Co.* case, moreover, should be considered in the light of the later decisions of the same court in *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2), and *United States* v. *Morris & Essex R. Co.*, 135 F. 2d 711 (C. C. A. 2), certiorari denied, 320 U. S. 754. In the *Warren Railroad Co.* case, that company and two other railroad companies had leased all their railroad properties to the Delaware, Lackawanna & Western Railroad Company, in consideration of the payment of agreed rentals directly to the lessors' stockholders and the payment of taxes on the properties by the lessee. The Government sought to collect from the lessee income taxes upon the lessors, on two theories: First, that the lessee had agreed to pay income taxes; and

second, that the lessee was liable under Section 3710 (b) for failure to surrender property of the lessors in its possession upon demand. The court held that the lessee's covenant to pay taxes on the property did not include the Federal income tax. It also held that when the levies were attempted no rentals were due to be paid to the lessors and hence there was no liability on the part of the lessee for failure to surrender property of the lessors in its possession. The court, however, authorized an amendment of the judgment, to enjoin the lessee from making further payments of rent to the stockholders of the lessors as they became due, until the United States should have an opportunity to levy upon the accrued rentals for income taxes. The judgment directed the lessee to pay the rentals to the collector when levied upon. The injunction rested upon the theory that the Government's right to levy upon the lessors' income as it became due should not be defeated by the right of the shareholders, wholly derivative from the lessor corporations, to have it paid to them. In the *Morris & Essex R. Co.* case, involving a similar lease, the court again sustained an injunction against payment of future rentals to the lessor's stockholders, holding specifically that the Government would have a lien on such rentals after demand upon the taxpayer for the taxes (135 F. 2d at 713).

No point is made in the *Warren Railroad* and *Morris & Essex Railroad* cases of the existence

of a contract right of the lessors to receive future payments under the leases at the time the tax liens attached. The liens were, rather, viewed as attaching to the rentals as they became due. Hence these cases appear to be on all fours with those cited above (pp. 13–14), in which tax liens were held to be effective as to after-acquired property in the absence of previous contract rights to the property. In the *Citizens Nat. Trust & S. Bank* case, *supra*, the after-acquired property held subject to the lien was an inherited interest in an estate which arose after the lien; in *Nelson* v. *United States*, 139 F. 2d 162 (C. C. A. 9), certiorari denied, 322 U. S. 764, the lien was held to attach to a crop of grapes raised after the lien arose; and in *United States* v. *Worley*, 27 A. F. T. R. 1143 (S. D. Ind., 1940), dividends declared after the lien attached were held to be covered by the lien.[28]

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[28] The Bank cites (Pet. 26–28) *Investment & Securities Co.* v. *Robbins*, 49 F. Supp. 629 (E. D. Wash.), as supporting its position. A reading of that opinion shows the contrary. There the property involved was a dividend paid after the tax lien arose as a partial refund of an assessment previously paid by the taxpayer as a shareholder of an insolvent national bank. The court squarely held that the lien attached to this dividend as property of the taxpayer, even though it was after-acquired property, and this decision was affirmed on appeal. *Investment & Securities Co.* v. *United States*, 140 F. 2d 894 (C. C. A. 9). Here also the taxpayer possessed no contractual right to receive the dividend when the lien arose.

B. THE LIEN EXTENDS TO CLAIMS FOR COMPENSATION FOR PERSONAL SERVICES.

Nothing in the pertinent statutes or their legislative history suggests that claims for salary or wages previously earned are not property or a right to property which is subject to the lien for taxes. The policy which has found expression in state statutes limiting garnishment of wages to a percentage of earnings or exempting compensation for personal services entirely from attachment,[24] like the analogous policy in respect to homesteads (cf. *Shambaugh* v. *Scofield*, 132 F. 2d 345 (C. C. A. 5); *Staley* v. *Vaughn* (Tex. Civ. App., 1932) 50 S. W. 2d 907, 911–912), has not been embodied in the Internal Revenue Code. If it were to be, it should limit the right of distraint as well as the lien;[25] and petitioner acknowledges that the earnings here in question are subject to distraint (Pet. 9). A contrary policy also prevails with respect to the earnings of an individual following his discharge in bankruptcy, which, as has been pointed out (*supra*, fn. 18, p. 21), remain

[24] See Section 886 of Title 42, Purdon's Pennsylvania Statutes (1930); *Integrity Trust Co.* v. *Taylor*, 312 Pa. 3 (1933); *Steel* v. *McKerrihan*, 172 Pa. 280 (1896); *Hamberger* v. *Marcus*, 157 Pa. 133 (1893); *Bell* v. *Roberts*, 150 Pa. Super. Ct. 469 (1942).

[25] Cf. the proposed Internal Revenue Administrative Code, published by the Treasury Department in 1941, secs. 4094, 4122, and particularly the notes to these sections.

subject to the Government's antecedent claims for taxes.

It is settled, of course, that state statutes do not limit the United States in pursuing its remedies for the collection of taxes under Federal law, unless they have been made applicable by act of Congress. *Fink* v. *O'Neil,* 106 U. S. 272, 276–277; *Shambaugh* v. *Scofield,* 132 F. 2d 345 (C. C. A. 5); *Jones* v. *Kemp,* 144 F. 2d 478 (C. C. A. 10); *Kieferdorf* v. *Commissioner,* 142 F. 2d 723 (C. C. A. 9), certiorari denied, 323 U. S. 733; *United States* v. *City of Greenville,* 118 F. 2d 963 (C. C. A. 4); *Kyle* v. *McGuirk,* 82 F. 2d 212 (C. C. A. 3); *Cannon* v. *Nicholas,* 80 F. 2d 934 (C. C. A. 10). Nothing in the wording of Section 3670 of the Internal Revenue Code or of any other statute suggests that earned compensation for personal services is not subject to the lien for taxes.

It is scarcely necessary to labor the point that, whatever may be said as to the nature of the expectancy of an employee that he will earn wages in the future, or even of a contract right to continue in employment for a term, the right to "unpaid wages, salaries, or fees for services *already* rendered" is a right of property. (Noyes, *The Institution of Property* (1936), p. 453). Like homesteads, therefore (*Jones* v. *Kemp, supra; Shambaugh* v. *Scofield,*

supra), and intangible property[26] and equitable interests,[27] earned wages are covered by the Government's tax lien; for they fall within the words and the intention of Congress.

The Bank argues, however, that the application of the lien to money claims will have an adverse effect on business dealings (Pet. 10, 37), stating (Pet. 37):

> If the interpretation placed on 3670 by the Court below is permitted to stand, it will be increasingly difficult for any person against whom a tax lien has been filed to get a new start or even to obtain employment. It would be hazardous for any one engaged in business or trade of any kind to deal with him.

This argument is based upon the erroneous assumption that an employer or debtor of the taxpayer, if he makes payment of sums due in igno-

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[26] *MacKenzie* v. *United States*, 109 F. 2d 540 (C. C. A. 9); *Citizens State Bank of Barstow, Tex.* v. *Vidal*, 114 F. 2d 380 (C. C. A. 10); *United States* v. *Warren R. Co.*, 127 F. 2d 134 (C. C. A. 2). In *United States* v. *Western Union Telegraph Co.*, 50 F. 2d 102 (C. C. A. 2), it was stated that the lien applied only to tangible property, but this holding was specifically disapproved in *United States* v. *Long Island Drug Co.*, 115 F. 2d 983, 986 (C. C. A. 2).

[27] *Matter of Rosenberg*, 269 N. Y. 247; certiorari denied, 298 U. S. 669; *United States* v. *Canfield*, 29 F. Supp. 734 (S. D. Cal.), appeal dismissed, *sub nom. Security-First Nat. Bank of Los Angeles* v. *United States*, 113 F. 2d 491 (C. C. A. 9); *Mercantile Trust Co.* v. *Hofferbert*, 58 F. Supp. 701 (D. Md.); cf. as apparently *contra*, *United States* v. *Dallas Nat. Bank*, 56 F. Supp. 181 (N. D. Tex.), pending on Government's appeal (C. C. A. 5).

rance of the tax lien, will be liable to the United States also. The lien, however, is upon the taxpayer's property and rights to property and not upon the correlative obligations of third persons to him. Third persons become liable to the Government only after demand by the collector pursuant to Section 3710 (a) of the Internal Revenue Code (*infra*, p. 51). A person upon whom no notice of distraint and demand for surrender of property has been served by the collector may therefore deal with another, whether or not he be delinquent in taxes, without fear of possible liability to the Government. See Kohlmeier, *Federal Tax Liens under Revised Statutes—Section 3186*, 13 Tax Magazine 191 (1935); cf. G. C. M. 5432, VIII–1 Cum. Bull. 134–135 (1929). Even if it were true that hardship to third persons might result from the lien, this fact would not be a ground for restricting the Government's claim by judicial decision, without warrant in the governing statute, as this Court has recently held. See *Detroit Bank* v. *United States*, 317 U. S. 329.

II

THE LIEN IS EFFECTIVE AS AGAINST SUBSEQUENT CLAIMANTS WITHOUT STEPS TO ENFORCE IT BY ATTACHMENT OR DISTRAINT

The Bank apparently takes the position in the present case that the Government does not have an effective lien until it is perfected by attachment or distraint. This position is without merit.

Sections 3670 and 3671 of the Internal Revenue Code themselves establish the lien, define the property upon which it operates, and fix the time when it commences and its duration. Although the lien is general in scope, it is a specific lien upon all property of the taxpayer. *United States* v. *City of Greenville,* 118 F. 2d 963 (C. C. A. 4); *Metropolitan Life Ins. Co.* v. *United States,* 107 F. 2d 311, 313 (C. C. A. 6). It arises spontaneously and is complete, requiring no subsequent action by the collector to perfect it. *United States* v. *City of Greenville, supra,* p. 965; *Maryland Casualty Co.* v. *Charleston Lead Works,* 24 F. 2d 836, 838 (E. D. S. C.). That the lien is not merely inchoate and is fully operative under the statute creating it is shown by the provisions of Section 3672 that the lien shall not be valid as against judgment creditors, purchasers, mortgagees, and pledgees until recorded, or against certain transferees of securities without actual notice; from the provisions of Sections 3673, 3674, and 3675 (*infra,* pp. 44–45) for release and partial discharge of property from the lien; and from the provision in Section 3679 (*infra,* pp. 47–48) for a civil action to clear the title to realty subject to the lien. These provisions have meaning only with reference to fully effective liens. It is incorrect, moreover, for the Bank to state (Pet. 2–3, 33) that the United States has taken no action to subject the receiver's fee to payment of the tax, since the United States filed with the trustees in bank-

ruptcy notice of liens and claims for payment of any fee or dividend awarded to Maddas. See footnote 5, *supra*, pp. 10–11.

Since the final step needed to render the liens for 1920, 1921, and 1922 taxes effective as against all other claimants, namely the filing of notice, was taken July 29, 1939, long before the Bank's judgment (see *supra*, pp. 3–4), there can be no question that these liens, if they embrace the receiver's fee as we contend, should prevail over the Bank's claim.

III

THE JUDGMENT OF THE COURT BELOW MAY ALSO BE SUPPORTED UPON THE GROUND THAT THE GOVERNMENT'S LIEN FOR 1936 TAXES AROSE AFTER THE TAXPAYER HAD ACQUIRED HIS PROPERTY RIGHT IN THE RECEIVER'S FEE; BUT THIS POINT WAS NOT PASSED UPON BY THE COURT BELOW

The Government's lien for 1936 taxes stands in a different relationship to Maddas's receiver's fee, which constitutes the property in dispute, from its liens for the years 1920, 1921, and 1922. The 1936 lien arose on January 20, 1941, when the collector received the assessment list for that year, and became valid as against judgment creditors on April 7, 1941, when notices were filed pursuant to Section 3672 of the Internal Revenue Code. At the time this lien arose Maddas had completed his services as receiver and had a right to receive a reasonable fee therefor, although the fee had not

yet been allowed by the referee and its amount had, therefore, not yet been determined.

The Bank obtained its judgment against Maddas on February 15 1941. A writ of attachment execution upon the judgment issued out of the state court on February 21, 1941, and was served upon the trustees in bankruptcy on that date.

The Government's contention is that its lien for 1936 taxes included Maddas's right to the receiver's fee already earned at the time the lien became effective, which was a right to property then vested in him. If this contention is correct, no question concerning the inclusion of after-acquired property arises with respect to this lien. Whether the lien prevails over the Bank's judgment and attempted attachment, which preceded the filing of notice of the tax lien, depends upon other considerations which were argued to the Circuit Court of Appeals in the briefs of both parties. That court, however, rested its judgment wholly upon the point that the liens for earlier years, which unquestionably arose prior to any claim of the Bank, embraced Maddas's after-acquired property right in the receiver's fee. Accordingly it became unnecessary for the court to pass upon the questions relating specifically to the 1936 lien. (R. 18.)

It is our contention that (a) the Bank's judgment alone did not confer a lien upon it under state law, (b) the Bank did not acquire a lien on the fee by virtue of the attachment in the state

court because the attachment was unauthorized and void, (c) even if an imperfect lien was obtained in the attachment proceedings, it terminated when further proceedings were enjoined by the bankruptcy court, and (d) in any event, under state law any lien which the Bank might possess attached only after the receiver's fee had become fixed in amount through its allowance by the bankruptcy court in June, 1941 (R. 8), and hence followed the Government's 1936 lien in point of time.

The foregoing questions are complex and require careful consideration of Pennsylvania state statutes and decisions, among other authorities. This Court, if it should decide that the Government is not entitled to the fund in question by virtue of the earlier tax liens, probably will not wish to undertake to resolve these questions without the benefit of their consideration by the Circuit Court of Appeals. See *Huddleston* v. *Dwyer*, 322 U. S. 232, 237; *Columbia River Co.* v. *Hinton*, 315 U. S. 143, 147. The petitioner has not based its objections to the decision of the court below upon any grounds which relate to these questions. Accordingly, we refrain from briefing these points and respectfully suggest that, if the judgment of the Circuit Court of Appeals cannot be affirmed upon the grounds which have been argued, the case be remanded for consideration of the points which remain unresolved by that court. *United States* v. *Ballard*, 322 U. S. 78, 88; *United States* v.

Wrightwood Dairy Co., 315 U. S. 110, 126; *Schriber Co. v. Cleveland Trust Co.*, 305 U. S. 47, 61.

CONCLUSION

For the reasons advanced under Points I and II of the argument, we respectfully urge that the judgment of the Circuit Court of Appeals be affirmed.

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OCTOBER, 1945.

APPENDIX

STATUTES

Internal Revenue Code:

SEC. 276. PERIOD OF LIMITATION UPON ASSESSMENT AND COLLECTION—EXCEPTIONS.

* * * * *

(c) *Collection After Assessment.*—Where the assessment of any income tax imposed by this chapter has been made within the period of limitation properly applicable thereto, such tax may be collected by distraint or by a proceeding in court, but only if begun (1) within six years after the assessment of the tax, or (2) prior to the expiration of any period for collection agreed upon in writing by the Commissioner and the taxpayer before the expiration of such six-year period. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (26 U. S. C. 276.)

SEC. 3655. NOTICE AND DEMAND FOR TAX.

(a) *Delivery.*—Where it is not otherwise provided, the collector shall in person or by deputy, within ten days after receiving any list of taxes from the Commissioner, give notice to each person liable to pay any taxes stated therein, to be left at his dwelling or usual place of business, or to be sent by mail, stating the amount of such taxes and demanding payment thereof.

* * * * *

(26 U. S. C. 3655.)

SEC. 3670. PROPERTY SUBJECT TO LIEN.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person. (26 U. S. C. 3670.)

SEC. 3671. PERIOD OF LIEN.

Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time. (26 U. S. C. 3671.)

SEC. 3672 [as amended by Sec. 401 of the Revenue Act of 1939, c. 247, 53 Stat. 862, and Sec. 505 of the Revenue Act of 1942, c. 619, 56 Stat. 798]. VALIDITY AGAINST MORTGAGEES, PLEDGEES, PURCHASERS, AND JUDGMENT CREDITORS.

(a) *Invalidity of Lien Without Notice.*— Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the collector—

(1) *Under state or territorial laws.*— In the office in which the filing of such notice is authorized by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law authorized the filing of such notice in an office within the State or Territory; or

(2) *With the clerk of district court.*—In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law authorized the filing of such notice in an office within the State or Territory; or

* * * * *

(b) (1) *Exception in case of securities.*—Even though notice of a lien provided in section 3670 has been filed in the manner prescribed in subsection (a) of this section, or notice of a lien provided in section 3186 of the Revised Statutes, as amended, has been filed in the manner prescribed in such section or subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser, of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of 'security.*—As used in this subsection the term "security" means any bond, debenture, note, or certificate, or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase,

any of the foregoing; negotiable instrument; or money.

(3) *Applicability of subsection.*—Except where the lien has been enforced by a proceeding, suit, or civil action which has become final before the date of enactment of the Revenue Act of 1939, this subsection shall apply regardless of the time when the mortgage, pledge, or purchase was made or the lien arose. (26 U. S. C. 3672.)

SEC. 3673. RELEASE OF LIEN.

Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax, may issue a certificate of release of the lien if—

(a) *Liability satisfied or unenforceable.*—The collector finds that the liability for the amount assessed, together with all interest in respect thereof, has been satisfied or has become unenforceable by reason of lapse of time; or

(b) *Bond Accepted.*—There is furnished to the collector and accepted by him a bond that is conditioned upon the payment of the amount assessed, together with all interest in respect thereof, within the time prescribed by law (including any extension of such time), and that is in accordance with such requirements relating to terms, conditions, and form of the bond and sureties thereon, as may be specified in the regulations. (26 U. S. C. 3673.)

SEC. 3674. PARTIAL DISCHARGE OF PROPERTY.

(a) *Property Double the Amount of the Liability.*—Subject to such regulations as

the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of partial discharge of any part of the property subject to the lien if the collector finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such tax and the amount of all prior liens upon such property.

(b) *Part Payment.*—Subject to such regulations as the Commissioner, with the approval of the Secretary, may prescribe, the collector charged with an assessment in respect of any tax may issue a certificate of discharge of any part of the property subject to the lien if there is paid over to the collector in part satisfaction of the liability in respect of such tax an amount determined by the Commissioner, which shall not be less than the value, as determined by him, of the interest of the United States in the part to be so discharged. In determining such value the Commissioner shall give consideration to the fair market value of the part to be so discharged and to such liens thereon as have priority to the lien of the United States. (26 U. S. C. 3674.)

SEC. 3675. EFFECT OF CERTIFICATES OF RELEASE OR PARTIAL DISCHARGE.

A certificate of release or of partial discharge issued under this subchapter shall be held conclusive that the lien upon the property covered by the certificate is extinguished. (26 U. S. C. 3675.)

SEC. 3678. CIVIL ACTION TO ENFORCE LIEN ON PROPERTY.

(a) *Filing.*—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he has any right, title, or interest, to the payment of such tax.

(b) *Parties to Proceedings.*—All persons having liens upon or claiming any interest in the property or rights to property sought to be subjected as aforesaid shall be made parties to such proceedings and be brought into court.

(c) *Adjudication and Decree.*—The said court shall, at the term next after the parties have been duly notified of the proceedings, unless otherwise ordered by the court, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property and rights to property in question, and, in all cases where a claim or interest of the United States therein is established, may decree a sale of such property and rights to property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the find-

ings of the court in respect to the interests of the parties and of the United States.

(d) *Receivership.*—In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Commissioner during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity. (26 U. S. C. 3678.)

SEC. 3679. CIVIL ACTION TO CLEAR TITLE TO REALTY.

(a) *Obtaining Leave To File—*

(1) *Request for institution of proceedings by United States.*—Any person having a lien upon or any interest in the real estate referred to in section 3678, notice of which has been duly filed of record in the jurisdiction in which the real estate is located, prior to the filing of notice of the lien of the United States as provided in section 3672, or any person purchasing the real estate at a sale to satisfy such prior lien or interest, may make written request to the Commissioner to authorize the filing of a civil action as provided in section 3678.

(2) *Petition to court.*—If the Commissioner fails to authorize the filing of such civil action within six months after receipt of such written request, such person or purchaser may, after giving notice to the Commissioner, file a petition in the district court of the United States for the district in which the real estate is located, praying leave to file a civil action for a final determination of all claims to or liens upon the real estate in question.

(3) *Court order.*—After a full hearing in open court, the district court may in its discretion enter an order granting leave to

file such civil action, in which the United States and all persons having liens upon or claiming any interest in the real estate shall be made parties.

(b) *Service on United States.*—Service on the United States shall be had in the manner provided by sections 5 and 6 of the Act of March 3, 1887, entitled "An Act to provide for the bringing of suits against the Government of the United States", c. 359, 24 Stat. 506 (U. S. C., Title 28, Secs. 762, 763), as amended.

(c) *Adjudication.*—Upon the filing of such civil action the district court shall proceed to adjudicate the matters involved therein, in the same manner as in the case of civil actions filed under section 3678. For the purpose of such adjudication, the assessment of the tax upon which the lien of the United States is based shall be conclusively presumed to be valid.

(d) *Costs.*—All costs of the proceedings on the petition and the civil action shall be borne by the person filing the civil action. (26 U. S. C. 3679.)

SEC. 3690. AUTHORITY TO DISTRAIN.

If any person liable to pay any taxes neglects or refuses to pay the same within ten days after notice and demand, it shall be lawful for the collector or his deputy to collect the said taxes, with such interest and other additional amounts as are required by law, by distraint and sale, in the manner provided in this subchapter, of the goods, chattels, or effects, including stocks, securities, bank accounts, and evidences of debt, of the person delinquent as aforesaid. (26 U. S. C. 3690.)

SEC. 3691. PROPERTY EXEMPT FROM DISTRAINT.

(a) *Enumeration.*—There shall be exempt from distraint and sale, if belonging to the head of a family—

(1) *School books and wearing apparel.*—The school books and wearing apparel necessary for such family; also

(2) *Arms.*—Arms for personal use;

(3) *Livestock.*—One cow, 2 hogs, 5 sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed $50;

(4) *Fodder.*—The necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days;

(5) *Fuel.*—Fuel to an amount not greater in value than $25;

(6) *Provisions.*—Provisions to an amount not greater than $50;

(7) *Household furniture.*—Household furniture kept for use to an amount not greater than $300; and

(8) *Books and tools of trade or profession.*—The books, tools, or implements, of a trade or profession, to an amount not greater than $100.

(b) *Appraisal.*—The officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt. (26 U. S. C. 3691.)

SEC. 3692. LEVY.

In case of neglect or refusal under section 3690, the collector may levy, or by warrant may authorize a deputy collector to levy, upon all property and rights to property, except such as are exempt by the preceding section, belonging to such person, or on which the lien provided in section 3670 exists, for the payment of the sum due, with interest and penalty for nonpayment, and

also of such further sum as shall be sufficient for the fees, costs, and expenses of such levy. (26 U. S. C. 3692.)

SEC. 3693. PROCEEDINGS ON DISTRAINT.

When distraint is made, as provided in section 3690—

(a) *Account and Notice to Owner.*—The officer charged with the collection shall make or cause to be made an account of the goods or effects distrained, a copy of which, signed by the officer making such distraint, shall be left with the owner or possessor of such goods or effects, or at his dwelling or usual place of business, with some person of suitable age and discretion, if any such can be found, with a note of the sum demanded and the time and place of sale; and

(b) *Public Notice.*—Forthwith cause a notification to be published in some newspaper within the county wherein said distraint is made, if a newspaper is published in said county, or to be publicly posted at the post office, if there be one within five miles nearest to the residence of the person whose property shall be distrained, and in not less than two other public places. Such notice shall specify the articles distrained, and the time and place for the sale thereof.

(c) *Time and Place of Sale.*—The time of sale shall not be less than ten nor more than twenty days from the date of such notification to the owner or possessor of the property and the publication or posting of such notice as provided in subsection (b) and the place proposed for the sale shall not be more than five miles distant from the place of making such distraint.

(d) *Adjournment of Sale.*—Said sale may be adjourned from time to time by said officer, if he deems it advisable, but not

for a time to exceed in all thirty days. (26 U. S. C. 3693.)

SEC. 3700. AUTHORITY TO DISTRAIN.

When goods, chattels, or effects sufficient to satisfy the taxes imposed upon any person are not found by the collector or deputy collector, he is authorized to collect the same by seizure and sale of real estate. (26 U. S. C. 3700.)

SEC. 3701. PROCEEDINGS ON DISTRAINT [OF LAND].

* * * * * *

SEC. 3710. SURRENDER OF PROPERTY SUBJECT TO DISTRAINT.

(a) *Requirement.*—Any person in possession of property, or rights to property, subject to distraint, upon which a levy has been made, shall, upon demand by the collector or deputy collector making such levy, surrender such property or rights to such collector or deputy, unless such property or right is, at the time of such demand, subject to an attachment or execution under any judicial process.

(b) *Penalty for Violation.*—Any person who fails or refuses to so surrender any of such property or rights shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered, but not exceeding the amount of the taxes (including penalties and interest) for the collection of which such levy has been made, together with costs and interest from the date of such levy.

(c) *Person Defined.*—The term "person" as used in this section includes an officer or employee of a corporation or a member or employee of a partnership, who as such officer, employee, or member is under a

duty to perform the act in respect of wh the violation occurs. (26 U. S. C. 3710.)

SEC. 3744. SUITS FOR TAXES.

Taxes may be sued for and recovered in the name of the United States in any proper form of action, before any district court of the United States, for the district within which the liability to such tax is incurred, or where the party from whom such tax is due resides at the time of the commencement of the said action. (26 U. S. C. 3744.)

Revised Statutes:

SEC. 3466. Whenever any person indebted to the United States is insolvent, or whenever the estate of any deceased debtor, in the hands of the executors or administrators, is insufficient to pay all the debts due from the deceased, the debts due to the United States shall be first satisfied; and the priority hereby established shall extend as well to cases in which a debtor, not having sufficient property to pay all his debts, makes a voluntary assignment thereof, or in which the estate and effects of an absconding, concealed, or absent debtor are attached by process of law, as to cases in which an act of bankruptcy is committed. (31 U. S. C. 191.)

ADMINISTRATIVE RULINGS

G. C. M. 4715, VII-2 Cum. Bull. 94 (1928):

A collector states that numerous requests have been received by his office for the release of liens attaching to property of taxpayers for the nonpayment of taxes, and inquiries how this office construes the meaning of section 613 (c) 1 of the Revenue

Act of 1928 as it affects tax liens and their release.

In connection with the inquiry mention is made of an additional tax that was assessed against a certain corporation which had become insolvent, although not going through bankruptcy, before the assessment reached the collector's office. It appears that during the corporation's solvency a bank in the same locality had advanced it moneys secured by a first mortgage upon the corporation's physical assets, the mortgage being properly recorded, and that when the assessment reached the collector's office warrants for distraint were in due time issued but no collection made, thus necessitating the filing of Federal tax liens. The bank has since foreclosed, and now has an opportunity to make a sale of the property, but the purchaser objects, on the ground that the unsatisfied tax lien beclouds the title. The bank contends that the tax lien is invalid and unenforceable because of the priority of the mortgage over the tax lien, as shown by the collector's records, and that section 613 (c) 1 of the Revenue Act of 1928 authorizes collectors of internal revenue to remove liens in cases of this character.

The above-mentioned section of the new law reads as follows:

> SEC. 613 (c). Subject to such regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe, the collector of internal revenue charged with an assessment in respect of any tax—
>
> (1) May issue a certificate of release of the lien if the collector finds that the liability for the amount assessed,

> together with all interest in respect thereof, has been satisfied or has become unenforceable;

Assuming the fact of the foreclosed prior mortgage and all other facts to be as stated, it is the opinion of this office that the above-quoted section of the law does not mean that the Government's lien against the property of a taxpayer should be released before the 6-year period governing collection has expired, for the reason that it is altogether probable that a delinquent taxpayer may at any time prior to the expiration of the statutory period of limitation become possessed of property against which the lien may attach, thus making the tax liability enforceable through the lien. If the taxpayer is insolvent the tax may be compromised, offers in compromise being made through the collector of internal revenue for the district in which the taxpayer lives, from whom the appropriate forms may be obtained.

The following regulations were prescribed in T. D. 4275, VII–2 Cum. Bull. 167 (1929) in accordance with the provisions of Section 3186 of the Revised Statutes as amended:

> The collector of internal revenue to whom is charged an assessment in respect of any internal-revenue tax shall issue a certificate of release of the tax lien whenever he finds that the liability for the amount assessed (together with all interest in respect thereof) has been satisfied or has become unenforceable. The word "unenforceable" as here used means unenforceable as a matter of law, and not merely uncollectible or unenforceable as a matter of fact. Tax liabilities frequently are unenforceable in

fact for the time being, due to the temporary nonpossession by the taxpayer of discoverable property or property rights. In all cases the liability for the payment of the tax continues until satisfaction of the tax in full or until the expiration of the statutory period for collection, including such period as the taxpayer by consent in writing may agree with the Commissioner shall constitute the time within which the tax assessed may lawfully be collected. Collectors should continue to investigate carefully all cases of delinquent taxpayers where notice of lien has been filed, with a view of obtaining, before the expiration of the collection period, such written consent for the extension of the collection period, whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied.

* * * * *

U. S. GOVERNMENT PRINTING OFFICE: 1958

SUPREME COURT OF THE UNITED STATES.

No. 50.—October Term, 1945.

Glass City Bank of Jeanette, Pennsylvania, Petitioner,
vs.
The United States of America.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 13, 1945.]

Mr. Justice Black delivered the opinion of the Court.

In 1941 the petitioner bank obtained a judgment in a Pennsylvania State Court against one Frank A. Maddas, for about $19,000.00. The United States had unpaid, judicially established, income tax claims against Maddas for the years 1920, 1921, and 1922,[1] which exceed $1,000,000.00. 40 B. T. A. 572; 114 F. 2d 548. Because of Maddas' past services as a State court receiver of a brewing company, the trustee of that company, now in bankruptcy, owes Maddas $3,228.53. The issue here is whether the bank or the government may recover on the debt owed to Maddas. The bank claims under a lien alleged to have been created by an attachment-execution issued on its State court judgment and served on the trustee in bankruptcy February 21, 1941. The United States claimed priority, by virtue of a tax lien under 26 U. S. C., §§ 3670, 3671,[2] which both parties admit arose in 1935, five years prior to the taxpayer's services as

[1] There is also a claim for 1936 taxes which raises different questions that need not be considered here.

[2] "Sec. 3670. Property Subject to Lien.

"If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, penalty, additional amount, or addition to such tax, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

"Sec. 3671. Period of Lien.

"Unless another date is specifically fixed by law, the lien shall arise at the time the assessment list was received by the collector and shall continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time."

Section 3672 provides that the lien shall not be valid against any mortgagee, pledgee, purchaser, or judgment creditor until notice is filed in an office designated by State law or in the office of the clerk of the United States District Court. Here such notice was duly filed.

receiver. The contention of the bank in the District Court[3] was that the statutory tax lien, which became effective in 1935, did not cover Maddas' claim since it did not exist when the lien arose but only thereafter, and that the government, therefore, could reach the debt only by garnishment or distraint as provided by other sections of the Internal Revenue Code. The Circuit Court of Appeals concluded that the statutory tax lien did cover after-acquired property and accordingly affirmed the District Court's judgment for the United States. 146 F. 2d 831. We granted certiorari because of statements made in the opinions of other courts which seemed to conflict with the conclusion below. *United States* v. *Long Island Drug Co.*, 115 F. 2d 983; *United States* v. *Pacific Railroad*, 1 Fed. 97.

By Section 3670, 26 U. S. C., Congress impressed a lien upon "all property and rights to property, whether real or personal, belonging" to a tax delinquent. Stronger language could hardly have been selected to reveal a purpose to assure the collection of taxes. Not content with this language, however, Congress also provided that the lien should "continue until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." 26 U. S. C., § 3671. These two sections read together indicate that a continuing lien covers property or rights to property in the delinquent's hands at any time prior to expiration. This is confirmed by Section 3678, which provides that "whether distraint proceedings have been commenced or not", action to enforce the lien may be instituted against "any property and rights to property, whether real or personal, or to subject any such property and rights to property *owned by the delinquent*, or in which he *has* any right, title or interest, to the payment of such tax." (Italics supplied). For here is a plain intent to subject to the lien "property owned by the delinquent" when suit is filed, rather than only that owned when the lien arose. Indeed, the meaning of these sections is so plain as to render superfluous a detailed discussion of the legislative history which is consistent with our interpretation.[4]

[3] The District Court acquired jurisdiction because the indebtedness to Maddas was due from the trustee. The procedure by which that jurisdiction was acquired is sufficiently set forth in the opinions below and need not be repeated here. 54 F. Supp. 11; 146 F. 2d 831.

[4] 14 Stat. 98, 107; 15 Stat. 125, 167; 37 Stat. 1016; 45 Stat. 791, 875.

Furthermore the agencies administering the statute have construed it in the same way. Thus, in 1928 General Counsel Memorandum No. 4715, vii-2 Cum. Bul. 94, declared that "a delinquent taxpayer may at any time prior to the expiration of the statutory period of limitation become possessed of property against which the lien may attach, thus making the tax liability enforceable through the lien." Again in Treasury Decision 4275, viii-2 Cum. Bul. 167, Collectors were admonished to keep on the alert where notice of liens had been filed, so as to extend the period of their effectiveness "whenever it is reasonably possible that the taxpayer may, in the future, acquire property or property rights from which the tax liability may be satisfied." And in *Graves* v. *Commissioner*, 12 B. T. A. 124, 133, the Tax Board said that the lien applied, "of course, to all the property that the tax debtor subsequently acquired."

The bank's arguments on behalf of a statutory construction supporting its claims are without merit. We are told that to increase unduly the scope of the government's lien is unwise. But most of the objections raised would apply not merely to liens that cover after-acquired property, but also with equal force to most other types of liens. At any rate the wisdom of legislation is a question for Congress. We are further told that the tax lien cannot attach to Maddas' claim because the law of Pennsylvania, where this obligation arose, does not treat "future earning capacity" as "property or rights to property." But the question of whether the tax lien covers future earning capacity is not before us. For the government here seeks to reach an already existing obligation for services rendered, which clearly falls within the statutory language. Cf. *Matter of Rosenberg*, 269 N. Y. 247. Moreover, the Congressional meaning is not to be determined by resorting to the local law of Pennsylvania. *United States* v. *Snyder*, 149 U. S. 210; *Helvering* v. *Stuart*, 317 U. S. 154, 161-162.

Our conclusion is that the lien applies to property owned by the delinquent at any time during the life of the lien. This is in accord with all the cases that have directly passed upon this question.[5] As previously noted, there are two cases which con-

[5] Citizens Nat. Trust & S. Bank of Los Angeles v. United States, 135 F. 2d 327 (C. C. A. 9); Nelson v. United States, 139 F. 2d 162 (C. C. A. 9); Investment & Securities Co. v. United States, 140 F. 2d 894 (C. C. A. 9); United States v. Worley (S. D. Ind.), decided March 8, 1940 (27 A. F. T. R. 1143); Minnesota Mut. Life Ins. Co. v. United States, 47 F. 2d 942, 944 (N. D. Tex.). See also United States v. Warren R. Co., 127 F. 2d 134; Matter of Rosenberg, *supra*.

tain language which might lead to another conclusion. But nothing there said offers any persuasive reason for restricting the scope of the lien.

Affirmed.

Mr. Justice JACKSON took no part in the consideration or decision of this case.

SUPREME COURT OF THE UNITED STATES.

No. 50.—October Term, 1945.

Glass City Bank of Jeanette, Pennsylvania, Petitioner, *vs.* The United States of America.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[November 13, 1945.]

Mr. Justice Rutledge, dissenting.

I am unable to find in the applicable statutes the clear expression of Congressional intent which I think is required to extend the tax lien to after-acquired property. Under § 3670 the lien is imposed as to taxpayers delinquent after demand "upon all property and rights to property, whether real or personal, belonging to such person." By § 3671 the lien arises, unless another date is specifically fixed by law, "at the time the assessment list was received by the collector" and continues "until the liability for such amount is satisfied or becomes unenforceable by reason of lapse of time." Nothing in these sections gives any indication that Congress intended the lien to reach after-acquired property. The language used, whether in § 3670 or in § 3671, is fully satisfied if the lien is held to attach to property belonging to the taxpayer as of the time the lien arises.[1] Had Congress intended to reach not only every description of property then owned by the taxpayer, but also every species which might later come into his hands, clearer words than "all property" and "belonging to" were readily available to express this purpose. The harshness of the consequences, not only for the taxpayer but for others dealing with him, which this case dramatically exemplifies, gives reason beyond the ambiguity of the language used for thinking there was no such intent.

[1] Although by § 3671 the lien "arises" as of the time the assessment list is received by the collector, it relates back to the time of notice and demand, § 3670, as against the taxpayer, though by virtue of § 3672(a) it is not valid as against any mortgagee, pledgee, purchaser, or judgment creditor "until notice thereof has been filed by the collector" as provided.

Nor is such an intent supplied by use of the present tense of the verb "has" in the final clause of § 3678(a).[2] That section merely provides for the manner in which the lien defined by §§ 3670 and 3671 shall be enforced. Section 3678(a), in my opinion, was not intended to add to the scope of the lien or extend its definition beyond the limits defined by those sections. If the lien was designed to reach after-acquired property, the alternative method specified in § 3678(a) for reaching the property then owned by the debtor would seem to be redundant.

I find nothing in the legislative history which discloses any intention, more clearly than the words of the statute themselves, to include after-acquired property within the coverage of the lien. In the absence of clearer statutory foundation, the comparatively recent administrative construction cannot supply the required Congressional intent; and the scanty evidence of established and accepted practice is neither so wholly consistent nor so convincing as to furnish this necessary element.

Accordingly I would reverse the judgment and remand the cause to the Circuit Court of Appeals for the consideration and disposition of the issues presented to but not determined by it in view of its disposition upon the matters now determined here.

Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS join in this opinion.

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[2] "Sec. 3678. Civil Action to Enforce Lien on Property.

"(a) Filing.—In any case where there has been a refusal or neglect to pay any tax, and it has become necessary to seize and sell property and rights to property, whether real or personal, to satisfy the same, whether distraint proceedings have been commenced or not, the Attorney General at the request of the Commissioner may direct a civil action to be filed, in a district court of the United States, to enforce the lien of the United States for tax upon any property and rights to property, whether real or personal, or to subject any such property and rights to property owned by the delinquent, or in which he *has* any right, title, or interest, to the payment of such tax." (Emphasis added.)